

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 24, 2006 Session

IN THE MATTER OF: J.M.F.

**Appeal from the Juvenile Court for Grundy County
No. 4692 Charles Jenkins, Sr., Judge**

No. M2005-02017-COA-R3-PT - Filed March 20, 2006

Mother appeals the termination of her parental rights to her child, J.M.F. The trial court terminated Mother's parental rights on the grounds of failure to remedy persistent conditions, substantial noncompliance with permanency plans and abandonment by failing to visit and failing to provide support. The trial court also found the termination of Mother's parental rights was in the child's best interest. We affirm the trial court's termination of parental rights based upon Mother's failure to remedy persistent conditions and substantial noncompliance with permanency plans.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM B. CAIN, J., joined.

James S. Stephens, Manchester, Tennessee, for the appellant, L.G.F.

Paul G. Summers, Attorney General and Reporter; Douglas Earl Dimond, Senior Counsel; Elizabeth T. Ryan, and Wilson Harpe, for the appellee, State of Tennessee Department of Children's Services.

Christine Milene Flury Sitz, Guardian ad litem.

MEMORANDUM OPINION¹

J.M.F., a two year old child, was taken into protective custody by the Department of Children's Services June 7, 2002 after his mother, L.G.F. (Mother), was arrested for charges involving methamphetamines and child endangerment of children belonging to another family,

¹Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

conspiracy to manufacture methamphetamine and felony possession of drug paraphernalia.² J.M.F. was placed in foster care and has remained in the foster home since removal from Mother's home in 2002.

The first of three unsuccessful permanency plans was established shortly after J.M.F. was removed from the home. That permanency plan required Mother to be drug-free, secure stable housing and employment, attend parenting classes and seek psychological evaluation. She enrolled in an outpatient drug program in August of 2002 but subsequently relapsed. Thereafter, she failed to pursue further treatment. Moreover, she failed six random drug screens.

Mother has an extensive history of criminal behavior resulting in multiple incarcerations and convictions.³ She was convicted of burglary and has been on probation for that offense since November 22, 2002. She has repeatedly violated probation and spent seventeen months in jail since DCS took custody of J.M.F. in 2002.

The first of two petitions to terminate Mother's parental rights was filed on February 17, 2002. That matter went to trial in October of 2003, following which her parental rights were terminated. Mother made a timely appeal of that termination; however, soon thereafter the parties filed a joint motion requesting that we remand the case for consideration of a proposed agreement to vacate the trial court's order terminating Mother's parental rights and to implement a new plan to reunify mother and child. On remand, the trial court approved the settlement agreement and the first appeal was dismissed.

Thereafter, DCS notified Mother and her counsel of the scheduling of a staffing meeting to discuss and approve the latest permanency plan. The staffing meeting took place as scheduled; however, neither Mother nor her attorney attended.⁴ At the conclusion of the staffing meeting a new permanency plan was approved. A copy of the plan was mailed to Mother and her attorney. Another staffing meeting was scheduled for November 23, 2004 to discuss and review the permanency plan with Mother. Mother was notified of the meeting but did not attend. It was later discovered she did not attend the staffing because she was incarcerated on November 19, 2004 on a vandalism charge

² The charges involving methamphetamine and endangerment of children resulted from a March 31, 2001 incident, and the subsequent conspiracy to manufacture methamphetamine and felony possession of drug paraphernalia occurred March 8, 2002.

³ Her record in the General Sessions Court of Grundy County is fifteen pages long.

⁴ After the meeting began, Mother's sister called to notify DCS that Mother would not attend the meeting because she was hospitalized. During the trial in June 2005, Mother testified that she could provide proof of her hospitalization and offered, through counsel, to make that proof a late-filed exhibit; however, there is no proof of the hospitalization in the record.

and violation of probation.⁵ This was her sixth incarceration since DCS took custody of J.M.F. in 2002.

On February 17, 2005, DCS filed a second petition to terminate Mother's parental rights. DCS alleged that Mother failed to remedy the persistent conditions in her life that prevented reunification with J.M.F., that Mother was in substantial noncompliance with her permanency plan requirements, and that she abandoned J.M.F. by willfully failing to visit him since 2002 or support him in the four months immediately preceding the filing of the petition or prior to her recent incarceration. At trial, evidence was introduced proving that Mother had not exercised visitation with J.M.F. since September of 2002. It was also proven that she had failed to complete parenting classes and did not complete a psychiatric evaluation as required by the permanency plan. Additionally, DCS established that she had repeated relapses of drug abuse and failed several drug screens, and that she had been incarcerated six times for over seventeen months since 2002 and was incarcerated at the time of trial, and that she was scheduled to remain incarcerated until June 24, 2006. Moreover, it was shown that on those occasions she was not incarcerated, she failed to maintain contact with DCS, further complicating reunification with J.M.F.

Following the second trial of this matter in July of 2005, the trial court terminated Mother's parental rights, from which ruling Mother appeals.

There is clear and convincing evidence in the record to support the trial court's findings that Mother had a protracted history of criminal behavior and multiple incarcerations. There is also clear and convincing evidence to support the findings that she repeatedly failed to comply with the permanency plans by failing to successfully participate in drug treatment, by failing multiple drug screens, and by failing to communicate with DCS. Moreover, these findings fully support the trial court's conclusions that she failed to remedy the persistent conditions leading to the child's removal, and that she was in substantial noncompliance with the permanency plan. The record also contains clear and convincing evidence, including without limitation that she had not visited the child since losing custody in 2002, to support the conclusion that it was in the child's best interest to terminate Mother's parental rights. The evidence in the record does not, however, support a finding of willful abandonment as required by Tenn. Code Ann. § 36-1-102(1)(A)(i). A finding of willful abandonment for failing to support a child requires proof of an ability to provide support. *In re L.J.C.*, 124 S.W.3d 609, 620 (Tenn. Ct. App. 2003). This record lacks such evidence. To the contrary, it appears she was not able to provide financial support for the requisite period preceding the filing of the petition, due in part to the fact she was incarcerated for a portion of that time, and thus her failure could not have been willful. Nevertheless, it is only necessary to prove one of the statutory grounds alleged in a petition and that termination of parental rights is in the child's best interest. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002); Tenn. Code Ann. § 36-1-113(c)(i) and (ii). This record does that.

⁵ Mother committed vandalism at a park in September while with her mother, sister and her sister's two young children. According to police testimony, the family defaced a site known as Lone Rock, a wall, a picnic table and a trash can with paint and permanent marker.

The judgment of the trial court is affirmed as to termination on the basis of substantial noncompliance and failure to remedy persistent conditions, and this matter is remanded with costs of appeal assessed against Mother.

FRANK G. CLEMENT, JR., JUDGE